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IN THE

Supreme Court of the United States

October Term, 1961

No. 586

ST. HELENA PARISH SCHOOL BOARD, *et al.*,

Appellants,

—v.—

LAWRENCE HALL, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

MOTION TO AFFIRM AS TO CERTAIN APPELLANTS AND TO DISMISS OR AFFIRM AS TO OTHERS

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MOTION TO AFFIRM AS TO CERTAIN APPELLANTS AND TO DISMISS OR AFFIRM AS TO OTHERS

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the order of the District Court entered on August 30, 1961, be affirmed as to the appellants St. Helena Parish School Board and the members thereof, and J. H. Meadows, St. Helena Parish Superintendent of Schools, their successors, agents, representatives, attorneys, and all other persons who are acting or may act in concert with them, on the ground that the questions presented by their appeal are so unsubstantial as not to warrant further argument.

Appellees further move that the appeal of the appellants State of Louisiana, Jack P. F. Gremillion, Attorney General of Louisiana; Murphy J. Roden, Director of Public

Safety of Louisiana; Duncan S. Kemp, District Attorney of St. Helena Parish, Louisiana, and R. D. Bridges, Sheriff of St. Helena Parish, Louisiana, be dismissed because their appeal is not within the jurisdiction of this Court, or in the alternative, that the judgment against the last mentioned parties should be affirmed.

Statement

The original complaint in this action was filed on September 4, 1952, seeking injunctive and declaratory relief against racial segregation in the public schools of St. Helena Parish. On May 25, 1960, an order was entered by the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, enjoining appellant School Board, its members, and Superintendent, "from requiring segregation of the races in any school under their supervision, and from engaging in any and all action which limits or affects the admission to, attendance in, or education of plaintiffs or any other Negro child similarly situated in schools under defendants' jurisdiction, on the basis of race or color, from and after such time as may be necessary to make arrangement for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed as required by the decision of the Supreme Court in *Brown* v. *Board of Education*, 349 U. S. 294." On appellants' appeal this order was affirmed by the United States Court of Appeals on February 9, 1961. *St. Helena Parish School Board* v. *Hall*, 287 F. 2d 376 (5th Cir. 1961), cert. denied 7 L. ed. 2d 33 (1961).

On February 9, 1961, the day of affirmance by the Court of Appeals, the Governor of Louisiana called the Second Extraordinary Session of the Louisiana Legislature for 1961 into session to act "relative to the education of the

school children of the State . . . for the preservation and protection" of state sovereignty. This session enacted Act No. 2,[1] the law involved in this suit, and other related legislation designed to continue racial segregation in the public schools of the State of Louisiana. On February 20, 1961, Act No. 2 became law. This Act provides in pertinent part that "in each parish of the State and in each municipality having a municipally operated school system, the school board shall have authority to suspend or close the operation of the public school system in the elementary and secondary grades after an election has first been held at which a majority of the qualified voters voting in said election have authorized such suspension or closing"; that such election may be called on the initiative of a school board or on petition of ten percent of the qualified electorate; that when the operation of schools is suspended in accordance with such an election it may not be resumed unless approved after a further election; and that when schools are closed the school board may lease or sell school sites, buildings and property, and abolish school taxes.

On March 2, 1961, the appellant St. Helena Parish School Board, on its own initiative, resolved to call an election pursuant to Act No. 2, such election to be held on April 22, 1961, for the purpose of determining whether to authorize the appellant Board to suspend or close the public elementary and secondary schools of said parish.

On March 16, 1961, appellees filed a supplemental complaint asking the Court to restrain the St. Helena Parish School Board and its Superintendent of Schools from enforcing Act No. 2.

On March 17, 1961, the United States applied for an order designating it as *amicus curiae*, for an injunction

[1] La. R.S. 17:350.

to restrain the enforcement of Acts No. 3 and 5 of the Second Extraordinary Session and for an order adding as parties defendant in the case, the State of Louisiana, the Governor, Attorney General, and Director of Public Safety of Louisiana, and the District Attorney and Sheriff of St. Helena Parish. The United States requested no relief involving Act No. 2 in this petition.

On April 14, 1961, the Court invited counsel for all parties and the United States as *amicus curiae* to file briefs presenting their views on various questions propounded by the Court. The United States submitted a brief discussing the constitutionality of Act No. 2 and concluding that it was unconstitutional. The United States did not file a complaint, motion or petition praying for relief against any defendant concerning Act No. 2.

On August 30, 1961, in an opinion, signed by Judges Wisdom, Christenberry and Wright, the Court held Act No. 2 violative of the equal protection clause of the Fourteenth Amendment on two alternative grounds:

> Most immediately, it is a transparent artifice designed to deny the plaintiffs their declared constitutional right to attend desegregated public schools. More generally, the Act is assailable because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race (Opinion of the District Court as set forth in Jurisdictional Statement, pp. 33-34).

On August 30, 1961, the three-judge United States District Court for the Eastern District of Louisiana, Baton Rouge Division, entered its judgment, which judgment declared Act No. 2 unconstitutional and enjoined defendants St. Helena Parish School Board and the members thereof,

and J. H. Meadows, St. Helena Parish Superintendent of Schools, their successors, agents, representatives, attorneys, and all other persons who are acting or may act in concert with them from enforcing or seeking to enforce by any means the provisions of Act No. 2 of the Second Extraordinary Session of the Louisiana Legislature for 1961. The order of August 30, 1961 granted no relief against the other defendants added upon motion of the United States.

On September 11, 1961, appellants filed a Notice of Appeal to this Court in the United States District Court, Eastern District of Louisiana, Baton Rouge Division. On December 5, 1961, appellants filed their jurisdictional statement in this Court.

ARGUMENT

I. The Motion to Dismiss

The appeal of the State of Louisiana, Jack P. F. Gremillion, Attorney General of Louisiana; Murphy J. Roden, Director of Public Safety of Louisiana; Duncan S. Kemp, District Attorney of St. Helena Parish, Louisiana, and R. D. Bridges, Sheriff of St. Helena Parish, Louisiana, should be dismissed in that it is not within the jurisdiction of this Court because not taken in conformity with the applicable statute, namely, 28 U. S. C. §1253.

The order of August 30, 1961, did not grant any injunction or any other relief against the parties mentioned above. The only parties mentioned in that order were the St. Helena Parish School Board and the members thereof, and J. H. Meadows, St. Helena Parish Superintendent of Schools. (In addition, the order contained the usual reference to agents, attorneys and persons acting in concert with the named parties. Rule 65, Federal Rules of Civil Pro-

cedure.) None of the above-mentioned parties have been restrained from taking any action with respect to Act No. 2 of the Second Extraordinary Session of the Louisiana Legislature for 1961 in this proceeding (unless, of course, they are acting in concert with the named parties) and it appears from the Act itself that none of these parties have any rights or duties under Act No. 2.

The State of Louisiana and the other parties mentioned above were added as defendants in this action on March 17, 1961 (Jurisdictional Statement, p. 7) upon the request of the United States that it be allowed to participate in the action in the interest of justice as *amicus curiae* and upon the request of the United States that these parties be added as defendants. The motion filed by the United States on March 17, 1961 (granted by the order of that date) related exclusively to Acts Nos. 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961.[2] The Government's petition for an injunction to restrain the enforcement of Acts Nos. 3 and 5 of the Second Extraordinary Session, was entirely separate and distinct from the supplemental complaint filed by the plaintiffs Lawrence Hall, et al., which sought an injunction to restrain the St. Helena Parish School Board and J. H. Meadows from enforcing Act No. 2 of the Second Extraordinary Session of 1961. The temporary injunction issued by the court below does not mention Acts Nos. 3 and 5 and does not purport to enjoin the enforcement nor does that order

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[2] Act No. 3 punishes those who give or accept, or offer to give or accept "bribes" ("money or anything of apparent or prospective value") to parents, tutors, guardians, etc., in order to "encourage, influence, prompt, reward or compensate" them for permitting a child to go to a desegregated public school.

Act No. 5 provides criminal penalties for any act done to a child in a public school, or to his parents, etc., the purpose of which is to cause such person or teacher, principal or other school employee to participate in public school desegregation.

enjoin the State of Louisiana, its Attorney General, its Director of Public Safety or the District Attorney or Sheriff of St. Helena Parish, Louisiana. It is therefore apparent that the appeal by the above mentioned parties from the order of August 30, 1961, is not within the jurisdiction of this Court and should be dismissed. See *Boston Tow Boat Co.* v. *United States*, 321 U. S. 632.

II. Motion to Affirm

The decision of the court below is plainly correct and it is manifest that the questions upon which the decision of the cause depends are so unsubstantial in the light of the prior decisions of this Court as not to need further argument.

A.—The appellants' objection to the participation of the United States as *amicus curiae* in this litigation is plainly without merit. The only relief granted against the defendants by the order of August 30, 1961, was that requested by appellees Lawrence Hall, et al., in their supplemental complaint. The role of the United States in the litigation with respect to Act No. 2 was that of *amicus curiae* in the conventional sense. The United States as *amicus* briefed the issues, as did several state attorneys general, following the invitation of the trial court in its order of April 14, 1961. The United States has often participated in litigation involving racial discrimination as a friend of the court with the approval of this Court. See *Brown* v. *Board of Education*, 347 U. S. 483 and 349 U. S. 294; *Cooper* v. *Aaron*, 358 U. S. 1. However, the propriety of action by the United States as *amicus curiae* in actively intervening in such actions and advancing motions and applications for injunctions has been settled in related litigation where objections were raised by Louisiana officials to participation by the United States in school segre-

gation litigation. That issue was thoroughly discussed by a three-judge District Court in *Bush* v. *Orleans Parish School Board*, 191 F. Supp. 871, 875-878 (E. D. La., March 3, 1961); and that decision was affirmed by this Court in its last term *sub nom. Legislature of Louisiana* v. *United States*, 367 U. S. 908; *Denny* v. *Bush*, 367 U. S. 908; and *Tugwell* v. *Bush*, 367 U. S. 907. See also, *Bush* v. *Orleans Parish School Board*, 190 F. Supp. 861, 866 fn. 9 (E. D. La., Dec. 21, 1960), affirmed *sub nom. Legislature of Louisiana* v. *Bush*, 365 U. S. 569 (No. 706, Oct. Term 1960). In any event, the fact that the appellees sought the same relief urged by the United States below would make unnecessary a determination of the authority of the United States to seek affirmative relief as *amicus curiae*. Cf. *Faubus* v. *United States*, 254 F. 2d 797 (8th Cir. 1958), cert. denied 358 U. S. 829.

B. The appellants' argument that this is a suit against the State and thus forbidden by the Eleventh Amendment of the United States Constitution is plainly without merit. This argument has been repeatedly advanced in similar cases, including other aspects of this case, and repeatedly rejected. See *St. Helena Parish School Board* v. *Hall*, 287 F. 2d 376, 377 (5th Cir. 1961), cert. denied 7 L. ed. 2d 33 (1961); *Orleans Parish School Board* v. *Bush*, 242 F. 2d 156 (5th Cir. 1957), cert. denied 354 U. S. 921; *Board of Supervisors of Louisiana State University* v. *Fleming*, 265 F. 2d 736 (5th Cir. 1959); *Dorsey* v. *State Athletic Commission*, 168 F. Supp. 149 (E. D. La. 1958), affirmed 359 U. S. 533; *Bush* v. *Orleans Parish School Board*, 188 F. Supp. 916, 922 (E. D. La. 1960), aff'd *sub nom. Orleans Parish School Board* v. *Bush*, 365 U. S. 569; *Ex parte Young*, 209 U. S. 123.

C. The decision below correctly enjoined appellants St. Helena Parish School Board and the members thereof,

J. H. Meadows, St. Helena Parish Superintendent of Schools, their successors, agents, representatives, attorneys and others acting in concert with them from enforcing by any means the provisions of Act 2 of the Second Extraordinary Session of the Louisiana Legislature for 1961, and therefore should be affirmed as to them. Act No. 2 (Appellants' Jurisdictional Statement, p. 61) provides that in each parish of the state the school board shall have authority to suspend or close the operation of the public school system in the elementary and secondary grades following a public referendum which may be called by each parish board on its own initiative, or upon petition of 10% of the qualified electors. Such an election was held at the initiative of the board. 1,461 white and 111 Negroes were eligible to vote; 1,147 votes were cast for and 56 against, authorizing appellant school board to close the schools (Opinion of the Court below, Appellants' Jurisdictional Statement p. 52, note 30).

Closing the schools in the context of the history of this case could only have the effect of denying appellees the equal protection of the laws in two principal ways:

1. As the court below held the "*effect of the statute is to discriminate geographically against all students, white and colored, in St. Helena or any other community where the schools are closed under its provisions*" (emphasis in original) (Appellants' Jurisdictional Statement, pp. 43-44). For as the opinion below states, "absent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds." (*Ibid.*) See *James* v. *Almond*, 170 F. Supp. 331 (E. D. Va. 1959), appeal dismissed 359 U. S. 1006; *Aaron* v. *McKinley*, 173 F. Supp. 944 (E. D. Ark. 1959), affirmed *sub nom.*, *Faubus* v. *Aaron*, 361 U. S. 197; *Bush* v. *Orleans Parish School*

Board, 187 F. Supp. 42 (E. D. La. 1960), affirmed 365 U. S. 569; id., 188 F. Supp. 916 (1960), affirmed 365 U. S. 569.

Education in Louisiana is a state as well as a local function. As the opinion below points out, "[t]he Louisiana public school system is administered on a statewide basis, financed out of funds collected on a statewide basis, under the control and supervision of public officials exercising statewide authority under the Louisiana Constitution and appropriate state legislation." See *Nelson* v. *Mayor, etc., of Town of Homer*, 48 La. Ann. 258, 19 So. 271; *Hill* v. *DeSoto Parish School Board*, 177 La. 329, 148 So. 248, 250; *State* v. *City of New Orleans*, 42 La. Ann. 92, 7 So. 674, 677; *State* v. *Barham*, 173 La. 488, 137 So. 862, 864; *Singelmann* v. *Davis*, 240 La. 929, 125 So. 2d 414, 417. And see Appendix A to opinion below in Appellants' Jurisdictional Statement, pp. 53-58.

The Louisiana Constitution at present provides for a single state system. Article 12, §1. Public education is within the control of the central state government, the state legislature, and the State Department of Education. See cases and statutes cited by the court below (Appellants' Jurisdictional Statement, p. 48).

The fact that the decision involved a prerequisite local referendum does not immunize it from the equal protection clause of the Fourteenth Amendment. See, *Board of Education* v. *Barnette*, 319 U. S. 624, 638; *Boson* v. *Rippy*, 285 F. 2d 43, 45 (5th Cir. 1960). Indeed the state acting through the electorate logically cannot be distinguished from the state as it acts through its legislature or executive agencies.

2. Fundamentally, the statute below and its application are integral parts of the Louisiana program of massive resistance against the requirements of the Equal Protec-

tion clause of the Fourteenth Amendment. Immediately following the decision of the Court of Appeals for the Fifth Circuit in *St. Helena Parish School Board* v. *Hall*, 287 F. 2d 376 (5th Cir. 1961), the Governor of the State called the Legislature into Extraordinary Session to legislate with respect to education and "the preservation and protection" of state sovereignty. Shortly thereafter he certified as Emergency Legislation Act No. 2, which is the subject of this case and related legislation designed to perpetuate racial segregation in education (see Opinion of the Court Below, Appellants' Jurisdictional Statement, p. 33). While the language of the statute is Aesopian, the circumstances of its legislative history and its obvious intent and effect expose it as merely another effort to perpetuate segregation. The opinion of the court below (Appellants' Jurisdictional Statement, pp. 36-38), sets forth the language of the President pro tem. of the Senate explaining the bill as follows:

> "As I see it, Louisiana is entering into a new phase in its battle to maintain its segregated school system. The keystone to this new phase is the local option plan we have under consideration." Times-Picayune, February 20, 1961. (Appellants' Jurisdictional Statement, p. 37.)

As the opinion of the court below sums it up:

> " . . . the legislative leaders announced without equivocation that the purpose of the packaged plan was to keep the state in the business of providing public education on a segregated basis." (Appellants' Jurisdictional Statement, p. 38.)

Pursuant to this scheme, following school closing, the board is authorized to dispose of school property to private

schools—in connection with which other legislation has authorized the establishment of cooperatives which may receive state grants-in-aid. See Act 257 Legislative Session of 1958, La. R.S. 17:2801; Act. No. 3, Second Extraordinary Session of 1960, La. R.S. 17:2901. The highly articulated plan of which Act No. 2 and these other acts are a part is described in greater length in the opinion of the court below. See Appellants' Jurisdictional Statement, pp. 38-42.

In proceeding with the implementation of Act No. 2, as part of this scheme to perpetuate segregation in the face of a federal court decree, the appellants merited the injunction entered against them before they had taken further steps to deny children of the parish their constitutional rights. For as this Court held in *Cooper* v. *Aaron*, 358 U. S. 1, 17:

> "The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, not nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'"

And as the Court of Appeals for the Eighth Circuit held in the same case, *Aaron* v. *Cooper*, 261 F. 2d 97, 106, 107 (8th Cir. 1958):

> "State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Fourteenth Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the Laws."

CONCLUSION

It is respectfully submitted that the appeal of the appellants St. Helena Parish School Board and its members and J. H. Meadows, Superintendent of Schools presents no substantial question for decision by this Court and that the order of the District Court should be affirmed. It is further submitted that the appeal of the appellants State of Louisiana, Attorney General of the State of Louisiana, Director of Public Safety of Louisiana, and the District Attorney and Sheriff of St. Helena Parish, Louisiana, is not within the jurisdiction of this Court and should be dismissed, or in the alternative, that the judgment should be affirmed as to these appellants.

Respectfully submitted,

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